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Intelligence Community Reorganization: Potential Effects on DOD Intelligence Agencies

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Intelligence Community Reorganization: Potential Effects on DOD Intelligence Agencies

Summary

Although the Central Intelligence Agency (CIA) is the best known member of the Intelligence Community, the bulk of the nation's intelligence effort is undertaken by the intelligence agencies of the Department of Defense (DOD). In particular, the National Security Agency (NSA), the National Reconnaissance Office (NRO), and the National Geospatial-Intelligence Agency (NGA) (formerly known as the National Imagery and Mapping Agency (NIMA)) are major collectors of information for DOD and non-DOD consumers and absorb a large percentage of the annual intelligence budget. (The Defense Intelligence Agency (DIA), albeit a large and important component of the Intelligence Community, is more directly focused on DOD requirements.)

Some Members of Congress and independent commissions, most recently the National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission, have argued that a lack of coordination among intelligence agencies contributed to the failure to provide warning of the terrorist attacks of September 2001. In response, in December 2004 Congress passed intelligence reform legislation (P.L. 108-458) that modifies the existing organization of the Intelligence Community and establishes more centralized leadership under a newly created Director of National Intelligence (DNI).

As the legislation was being debated in the fall of 2004, attention focused on the extent of the budgetary and administrative authorities to be assigned to the DNI. Significant concerns were expressed by DOD officials, some Members of Congress, and various outside observers that providing the DNI with greater authority and control of intelligence agencies in DOD could jeopardize the increasingly close relationship between these agencies and the operating military forces.

The conference committee on intelligence reform legislation (S. 2845) addressed these concerns with language that gave the DNI substantial authorities over intelligence budgets, but not operational control over their activities. The final version of the legislation also provided that the details of budgetary authorities to be exercised by the DNI and other cabinet officers be worked out in accordance with guidelines to be issued by the President after the DNI is appointed.

This report will be updated as circumstances warrant.

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Intelligence Community Reorganization: Potential Effects on DOD Intelligence Agencies

Although the Central Intelligence Agency (CIA) is the best known component of the U.S. Intelligence Community, the intelligence agencies of the Department of Defense (DOD) account for the bulk of intelligence spending and intelligence personnel. The National Security Agency (NSA), the National Reconnaissance Office (NRO), the National Geospatial-Intelligence Agency (NGA), the Defense Intelligence Agency (DIA), and the intelligence elements of the four military services work around the world to collect and analyze information for consumers in the White House, federal agencies, the Congress, and DOD itself, including military units down to tactical levels. Collectively, their budgets are far larger than that of CIA because they are major collectors of electronic intelligence, that relies on multiple intercept sites, and reconnaissance satellites. They employ many more personnel (military and civilian) and, at least in terms of quantity, produce far more intelligence reports and analyses than the CIA.¹

Until the passage of recent legislation, the Director of Central Intelligence (DCI) has had the statutory authority to establish priorities for collection and analysis for all national intelligence agencies and to forward an annual intelligence budget to the President, but he has not had control of the execution of budgets (beyond that of the CIA) nor could he transfer funds or personnel from one agency to another over the objection of Cabinet officers.

For some years there were proposals to give the DCI greater authority to manage the activities of all intelligence agencies, including those in DOD. Many observers suggested that earlier proposals were not enacted because of concerns by DOD and some Members of the Armed Services Committees that such an initiative would weaken the ability of the Secretary of Defense to manage resources considered essential to carrying out DOD's statutory missions.

In the wake of the September 11, 2001 attacks and flawed estimates about weapons of mass destruction (WMD) in Iraq, there were renewed calls for intelligence "reform" or reorganization to remedy perceived shortcomings in the performance of intelligence agencies. Some Members of Congress argued that there was a need to establish a Director of National Intelligence (DNI) or National Intelligence Director (NID), or to enhance the authorities of the DCI with the goal of

¹ The intelligence efforts of the State, Commerce, Homeland Security, and Energy Departments and the Federal Bureau of Investigation (FBI) are much smaller and focused on analysis; they do not acquire or operate extensive and expensive technical collection systems.

ensuring better coordination. Similar recommendations were strongly urged by the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission). President Bush announced his support for creating the position of National Intelligence Director on August 2, 2004. After lengthy consideration, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) was signed on December 17, 2004. The act abolished the position of DCI, establishing in its stead the DNI and a separate Director of the CIA.

This report will briefly describe the intelligence agencies of the Defense Department, address their roles in the Intelligence Community and within DOD, and note the role of the recently established position of Under Secretary of Defense for Intelligence (USD(I)). It will look at current approaches to intelligence reorganization and discuss the possible implications of adopting them.

Intelligence Agencies of the Department of Defense

Defense Intelligence Agency

Established in 1961, DIA manages the Defense Attache System and other human intelligence (humint) collection efforts. In addition, DIA is responsible for the analysis of information from all sources in response to requirements established by the DNI, by the Office of the Secretary of Defense (OSD), and other DOD officials. DIA provides analytical support to senior defense officials, to the Joint Chiefs of Staff, combatant commanders, and joint task forces worldwide.

The National Reconnaissance Office

Established in 1960, the NRO designs, builds, and operates the reconnaissance satellites that collect images of the earth's surface and signals information. While the NRO is a DOD agency, it is staffed by both DOD and CIA personnel.

The National Security Agency

Established in 1952, NSA has two primary missions — developing codes to protect the security of official U.S. communications and providing signals intelligence (sigint). NSA collects, processes, and analyzes foreign signals in order to support national policymakers and the operational forces.

The National Geospatial-Intelligence Agency

The NGA, established in 1996 and originally known as the National Imagery and Mapping Agency (NIMA), provides geospatial intelligence — imagery, imagery intelligence, and geospatial data and information to DOD users and other officials responsible for national security. Geospatial information includes topographic, hydrographic, and other data referenced to precise locations on the earth's surface.

Intelligence Elements of the Military Services

The Army, Navy, Air Force, and Marine Corps have their own intelligence components that are, in general, not intelligence collection agencies, but process and analyze data, and disseminate intelligence to their respective operating forces.

National Intelligence Missions of Defense Agencies: The Role of the DCI

Three of these agencies — the NRO, NSA, and the NGA — have significant responsibilities for collecting intelligence of concern to agencies outside DOD. These three agencies more directly support national-level decisionmakers than do the intelligence organizations of the four military services and even DIA. Their efforts are described as “national,” as opposed to departmental or tactical. Senior policymakers often have significantly different intelligence needs than military consumers, although there is considerable overlap. For instance, national policymakers are directly concerned with implications of nuclear test programs in countries that are of no immediate concern to military commanders, whereas the latter could be focused on tactical threats to operations long underway that are not the focus of high-level policymakers.

“National intelligence” is the term used for intelligence that is of concern to more than one department or agency and provides the basis for national security policymaking. Beginning in the 1960’s, a generation of arms control agreements between the U.S. and the Soviet Union was based on satellite imagery that allowed U.S. policymakers to be confident of their estimates of Soviet military capabilities. More recently, national systems have permitted policymakers to monitor such crucial developments as transfers of WMDs, ethnic cleansing in various countries, and indications of narcotics traffic.

Inasmuch as national systems are expensive, and therefore not available in unlimited quantities, procedures have been developed to sort out priorities for coverage. The DCI had statutory authority to develop collection and analysis priorities in response to National Security Council (NSC) guidance. Generally, priorities have been sorted out by inter-agency committees working through the DCI’s Community Management Staff of the Intelligence Community and the Assistant DCI for Collection, to be implemented by national-level agencies, including NSA, the NRO, and the NGA.²

The efforts of NSA, the NRO, and the NGA have been funded as parts of the National Foreign Intelligence Program (NFIP)³ the annual budget for which the DCI

² 50 USC 403-4(d).

³ NFIP is defined at 50 USC 401a(6). Funding for CIA and DIA is also provided through the NFIP. By P.L. 108-458 (Section 1074) the NFIP becomes the National Intelligence Program (NIP).

annually develops and presents to the President.⁴ The DCI also has had authority to transfer funds and (for periods up to a year) personnel among NFIP programs with the approval of the Director of the Office of Management and Budget and affected agency heads. The Secretary of Defense was required to obtain the concurrence of the DCI before recommending individuals for appointment as head of the NRO, NSA, and the NGA. If the DCI did not concur, the Secretary of Defense might still recommend an individual to the President, but he had to include in the recommendation a statement that the DCI did not concur.⁵

National Intelligence Missions of Defense Agencies: The Role of the Secretary of Defense

In addition to responding to tasking in support of national policymakers, all defense agencies are closely involved in directly supporting operating military forces. The Secretary of Defense has statutory responsibilities for the effective functioning of national intelligence agencies in DOD.⁶ In addition, statutes require that the agencies be prepared to participate in joint training exercises, and establish uniform reporting systems to strengthen their readiness to support operating forces with respect to a war or threat to national security.⁷

The Defense Department's view of the central role of intelligence is evident in its most recent planning document, *Joint Vision 2020*:

The evolution of information technology will increasingly permit us to integrate the traditional forms of information operations with sophisticated all-source intelligence, surveillance, and reconnaissance in a fully synchronized information campaign. The development of a concept labeled the global information grid will provide the network-centric environment required to achieve this goal. The grid will be the globally interconnected, end-to-end set of information capabilities, associated processes, and people to manage and provide information on demand to warfighters, policy makers, and support personnel.⁸

National intelligence is now an essential part of DOD's planning and operational capabilities and, since the Persian Gulf War, has become thoroughly integrated into combat operations. One media account of the role of national-level agencies during recent hostilities in Iraq concluded:

⁴ 50 USC 403-3(c)(1)(A).

⁵ 50 USC 403-6(a). In the case of appointments of an individual as Director of DIA, the Secretary of Defense had to consult with the DCI but did not have to note any unwillingness by the DCI to concur in the appointment. 50 USC 403-6(b).

⁶ 50 USC 403-5.

⁷ 10 USC 193.

⁸ Department of Defense, Joint Chiefs of Staff, *Joint Vision 2020*, pp. 9, 10-11.

As with imagery and early-warning [satellite] constellations, space-based signals intelligence was far more responsive to tactical users in Operation Iraqi Freedom than in earlier campaigns. National Security Agency teams and related Air Force cryptologic units were forward-deployed to the theater of operations to assist tactical commanders in accessing and interpreting signals intelligence from orbital and air-breathing sources.

The need to integrate intelligence resources has also become more important inasmuch as

The distinction between strategic and tactical ISR [intelligence, surveillance, and reconnaissance] systems gradually has melted away as military requirements shifted from the nuclear and conventional threat posed by Russia to more diverse dangers arising from rogue states and terrorists.⁹

Propelled largely by the need for precise locating data to target precision-guided munitions (PGMs), intelligence from national sources has been woven into military operations at all echelons. Senior DOD officials and military leaders emphasize their reliance on this stream of information and argue that the national agencies need to be more responsive to their direction.

Some observers have long argued that the focus on support to military operations by national agencies has led to reduced support for national-level policymakers at the State Department and the NSC. For instance, it has been suggested that this emphasis on supporting the military was a contributing factor in the Intelligence Community's failure to provide advance notice of the Indian nuclear test in May 1998, at a time when U.S. reconnaissance satellites were primarily tasked with the support of U.S. military forces operating in the Persian Gulf region.¹⁰

In recent years, DOD's intelligence effort was coordinated, loosely according to some observers, by the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD C3I). In 2002, Secretary of Defense Donald Rumsfeld sought congressional authorization to establish a more senior position, that of Under Secretary of Defense for Intelligence (USD(I)); a provision was included to that effect in the Defense Authorization Act for FY2003 (P.L. 107-314, section 901).

In March 2003, Stephen A. Cambone, who had previously served as Deputy Undersecretary of Defense for Policy, was appointed to the position and his appointment was confirmed by the Senate. His responsibilities include coordinating DOD intelligence, and intelligence-related policy, plans, programs, requirements and resource allocations. He is to "exercise authority, direction, and control" over DIA,

⁹ Loren Thompson, "Satellites Over Iraq: A Report Card on Space-based ISR during Operation Iraqi Freedom," *ISR: Intelligence, Surveillance, & Reconnaissance Journal*, March 2004, pp. 20, 18.

¹⁰ See Jeremiah News Conference, CIA Press Release, June 2, 1998.

NGA, the NRO, NSA, and other agencies.¹¹ He had served as a single point of contact between DOD and the DCI on intelligence resource and policy issues.¹²

A significant responsibility of the Secretary of Defense is ensuring that the national intelligence programs of the NFIP and the joint military and tactical intelligence programs (known as the Joint Military Intelligence Program (JMIP) and Tactical Intelligence and Related Activities (TIARA)) are mutually supportive and not duplicative.¹³ In recent years the various sets of programs have been brought into closer alignment to support national policymakers concerned with details of tactical intelligence and military commanders who need information from national systems such as satellites.

Impetus for Reform

In the aftermath of the attacks of September 11, 2001, a number of observers as well as the Joint Inquiry of the two congressional intelligence committees and the 9/11 Commission, concluded that the organization and management of the Intelligence Community was inadequate and that, as a result, the DCI was unable to ensure that crucial information about the 9/11 plot was shared with analysts who might have been able to identify the threat in advance. The 9/11 Commission took note of

... some of the limitations of the DCI's authority over the direction and priorities of the intelligence community, especially its elements within the Department of Defense. The DCI has to direct agencies without controlling them. He does not receive an appropriation for their activities, and therefore does not control their purse strings. He has little insight into how they spend their resources. Congress attempted to strengthen the DCI's authority in 1996 by creating the positions of deputy DCI for community management and assistant DCIs for collection, analysis and production, and administration. But the authority of these positions is limited, and the vision of central management clearly has not been realized.¹⁴

The Joint Inquiry of the two intelligence committees concluded that the DCI was unable to establish a comprehensive intelligence effort against Al Qaeda even when the extent of the threat had become evident to the DCI at least by 1998. It reported:

¹¹ Paul Wolfowitz, Deputy Secretary of Defense, Memorandum for Secretaries of the Military Departments *et al.*, Implementation Guidance on Restructuring Defense Intelligence — and Related Matters, May 8, 2003.

¹² The Office of the Undersecretary of Defense for Intelligence, consisting of some 120 officials, has no analytical role within the Intelligence Community. All source analysis within DOD is the responsibility of DIA and the intelligence organizations of the military services.

¹³ For background on this issue, see CRS Report RL32508, *Intelligence, Surveillance and Reconnaissance (ISR) Programs: Congressional Oversight Issues*.

¹⁴ *9/11 Commission Report*, p. 357.

Following the August 1998 bombings of two U.S. embassies, the DCI placed Bin Ladin's terrorist network among the Intelligence Community's highest priorities. The DCI raised the status of the threat further still when he announced to CIA senior managers in December 1998:

We are at war [with Bin Ladin].... I want no resources or people spared in this effort, either inside the CIA or the [Intelligence] Community.

These were strong words. Rather than having a galvanizing effect, however, the Joint Inquiry record suggests that the Intelligence Community continued to be fragmented without a comprehensive strategy for combating Bin Ladin. The Joint Inquiry concluded that the DCI was either unable or unwilling to enforce consistent priorities and marshal resources across the Community.¹⁵

Simply put, the Joint Inquiry argued that, although DCI George Tenet put the Intelligence Community on a war footing against Al Qaeda, his writ did not run beyond the CIA to other parts of the Intelligence Community, including the major Pentagon agencies. Accordingly, the Joint Inquiry and the 9/11 Commission as well as others have urged that there should be a single senior official, having the title Director of National Intelligence or National Intelligence Director, responsible for managing the entire Intelligence Community, including NSA, the NRO, and the NGA along with the CIA and other intelligence entities.

Management and budgetary authority has been seen as needed to control national intelligence agencies of the Community. The Joint Inquiry recommended the creation of a statutory Director of National Intelligence with "the full range of management, budgetary and personnel responsibilities needed to make the entire U.S. Intelligence Community operate as a coherent whole." These responsibilities would include "establishment and enforcement of consistent priorities for the collection, analysis, and dissemination of intelligence throughout the Intelligence Community." The DNI would have responsibilities for the "review, approval, modification, and primary management and oversight of the execution of Intelligence Community budgets...".¹⁶

The 9/11 Commission recommended that a National Intelligence Director "manage the national intelligence program and oversee the agencies that contribute to it." The NID would:

submit a unified budget for national intelligence that reflects priorities chosen by the National Security Council.... He or she would receive an appropriation for national intelligence and apportion the funds to the appropriate agencies, in line with that budget, and with authority to reprogram funds among the national intelligence agencies to meet any new priority (as counterterrorism was in the

¹⁵ U.S. Congress, 107th Congress, 2d session, Senate Select Committee on Intelligence and House of Representatives Permanent Select Committee on Intelligence, *Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 11, 2001*, S.Rept. 107-351, H.Rept. 107-792, December 2002, p. 236.

¹⁶ Joint Inquiry, Report, p.33. The recommendations were published separately on December 10, 2002.

1990s). The National Intelligence Director should approve and submit nominations to the president of the individuals who would lead the CIA, DIA, FBI Intelligence Office, NSA, NGA, NRO, Information Analysis and Infrastructure Protection Directorate of the Department of Homeland Security, and other national intelligence capabilities.¹⁷

A number of bills were introduced designed create to a single director of the Intelligence Community.¹⁸ In some approaches, this individual would have operational control of all intelligence agencies, including those in DOD. Other approaches envision the person filling the USD(I) position simultaneously serving as a Deputy of the DNI/NID. Other versions do not precisely define the extent of the DNI's authorities.

On August 2, 2004 President Bush announced his intention to seek changes in the National Security Act to establish a National Intelligence Director, appointed by the President with the advice and consent of the Senate, who “will oversee and coordinate the foreign and domestic activities of the intelligence [community].”¹⁹ The President indicated that the CIA will be managed by a separate director. The Administration plan apparently did not envision the NID having the authority to control the budgets of the various agencies nor would the NID singlehandedly submit nominations for agency head positions to the President.²⁰

Subsequently, congressional attention focused on two bills dealing with intelligence reorganization — H.R. 10, introduced by Representative Hastert, and S. 2845, sponsored by Senators Collins and Lieberman. After extensive floor consideration and amendments, S. 2845 was passed by the Senate on October 6th; H.R. 10 was passed by the House on October 8th. Both bills would have established a NID with authorities more extensive than those assigned to the DCI by current legislation, but there were significant differences in the area of budgetary authority as well as in regard to other issues.²¹ As is noted below (“Recent Developments”), it proved difficult for the resulting Conference Committee to reach agreement on the language adopted by the two chambers.

¹⁷ *9/11 Commission Report*, pp. 411, 412. The Report added that DOD’s “military intelligence programs (JMIP) and the tactical intelligence and related activities program (TIARA) — would remain part of that department’s responsibility.” (P. 412.)

¹⁸ For details on specific legislative proposals, see CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*.

¹⁹ U.S., President George W. Bush, *Remarks by the President on Intelligence Reform*, August 2, 2004.

²⁰ See Andrew Card, White House Briefing, August 2, 2004, Federal News Service.

²¹ For further information on specific provisions, see CRS Report RL32601, *Comparison of 9/11 Commission Recommended Intelligence Reforms, S. 2845, S. 2774, H.R. 5024, Administration Proposal, H.R. 10, Current Law*.

Concerns About Reorganization Proposals

Whereas there appears to be no question that a failure to fully correlate information in the possession of intelligence and law enforcement agencies hindered the effort to uncover the 9/11 plot before it occurred, some observers argue that the main obstacle prior to 9/11 was the regulatory framework that created a “wall” between foreign intelligence and law enforcement analysts — and not organizational arrangements *per se*. From their perspective, the problem in large measure involved the CIA and the FBI and, among DOD agencies, primarily NSA which had to work within the constraints of the “wall” in regard to surveillance of U.S. persons. The 9/11 Commission criticized NSA’s “almost obsessive protection of sources and methods, and its focus on foreign intelligence, and its avoidance of anything domestic....”²² It is noteworthy, nevertheless, that the 9/11 Commission’s list of ten missed opportunities for stopping the plot does not cite a misstep by NSA or any other DOD agency.²³

Criticisms of proposals to establish a DNI/NID centered on the possibility (or likelihood) that they would undermine the authority of the Secretary of Defense over agencies that are closely integrated into the operational capabilities of the military services. Writing in June 2004, former DCI Robert Gates argued that:

More than 80 percent of foreign intelligence dollars are spent by agencies under the control of the secretary of defense. Virtually all of those agencies have tactical, combat-related tasks to perform for the Pentagon and the military services, in addition to the roles they play under the guidance of the director of central intelligence. In the real world of Washington bureaucratic and Congressional politics, there is no way the secretary of defense or the armed services committees of Congress are simply going to hand those agencies over to an intelligence czar sitting in the White House. Indeed, for the last decade, intelligence authority has been quietly leaching from the C.I.A. and to the Pentagon, not the other way around.²⁴

Bruce Berkowitz, who has worked with the Hoover Institution and the RAND Corporation and is currently serving as a DOD consultant, has written:

Proposals to yank intelligence organizations out of the Defense Department also overlook the role they play in combat operations today. The ability to feed electronic data to units on the battlefield through digital pipelines is essential for the kind of network-style warfare that has proved so effective in Iraq and Afghanistan. Combat forces use more of this data than anyone else. It seems odd that anyone would want to drag several intelligence organizations out of the Defense Department simply to create a new mega-organization whose main mission would be ... supporting the Defense Department.²⁵

²² *9/11 Commission Report*, p. 88.

²³ *Ibid.*, pp. 355-356.

²⁴ Robert M. Gates, “Racing to Ruin the C.I.A.,” *New York Times*, June 8, 2004, p. 25.

²⁵ Bruce Berkowitz, “Intelligence Reform: Less is More,” *Hoover Digest*, Spring 2004.

Another longtime observers of U.S. intelligence agencies, Richard Betts of Columbia University, wrote in mid-2004: “Trying to wrest the National Security Agency and like agencies from the Defense Department ... would leave Capitol Hill and Pennsylvania Avenue awash in blood.... The military services will never accept dependence on other departments for performance of their core functions, which include tactical intelligence collection, and politicians will not override military protests that their combat effectiveness is being put at risk.”²⁶

Such views were undoubtedly shared by some current and former DOD officials. In April 2004, months prior to the President’s August 2nd announcement, USD(I) Cambone testified that “we early concluded that the relationship between intelligence and operations was growing closer — so close, in fact, that it was beginning to become increasingly difficult to separate the two....” Expressing skepticism about plans to increase the role of the DCI or create a DNI, Cambone argued that, “...absent the [current] deep and abiding relationship between the DCI and the Secretary of Defense, it is easy to see the ways in which seams would begin to grow up between organizations and in which the Department of Defense would not be benefi[t]ed and in fact, the intelligence community as a whole be hurt by that split. So sustaining the existing relationship, we think, is essential.”²⁷

Cambone’s testimony echoed testimony offered in 1996 by John P. White, then the Deputy Secretary of Defense in the Clinton Administration, in regard to earlier legislation to reorganize the Intelligence Community: “Confusing the clear lines of authority that currently exist would make it more difficult for DOD intelligence elements to perform their most important mission — support to the warfighter. In the drive to create a strong Intelligence Community, we must not damage the integration of military intelligence within the Defense Community.”²⁸

Concerns within DOD persisted. On October 21, 2004 General Richard Myers, the Chairman of the Joint Chiefs of Staff, wrote to the Representative Hunter, Chairman of the House Armed Services Committee, maintaining that:

... the budgets of the combat support agencies [including NSA, NRO and NGA] should come up from the agencies through the Secretary of Defense to the National Intelligence Director, ensuring that required warfighting capabilities are accommodated and rationalized and ensuring that the Secretary meets his obligations. For appropriations, it is likewise important that the appropriations are passed from the National Intelligence Director through the [Defense] Department to the combat support agencies.

²⁶ Richard K. Betts, “The New Politics of Intelligence: Will Reforms Work This Time?,” *Foreign Affairs*, May/June 2004, p. 6.

²⁷ Testimony of Stephen Cambone, Under Secretary of Defense for Intelligence, Defense Department, before the Strategic Forces Subcommittee, Senate Armed Services Committee, April 7, 2004, FDCH Political Transcripts.

²⁸ Statement of Dr. John P. White, Deputy Secretary of Defense, before the House National Security Committee on Intelligence Community Reform, 11 July 1996, in U.S. Congress, 104th Congress, 2d session, House of Representatives, Committee on National Security, *H.R. 3237 — the Intelligence Community Act*, Hearing, H.N.S.C. No. 104-9, July 11, 1996, p. 10.

Potential Implications of New Approaches

Consideration of legislation to establish a DNI/NID focused on the extent of this official's authorities to coordinate all intelligence agencies, but some observers asserted that, separate from organizational issues, more significant steps had already been taken to improve sharing of information. Implying that organizational issues were not necessarily the key factor, they assert that the Intelligence Community's failure "to connect the dots" before the 9/11 attacks resulted in large measure from barriers to communications between foreign intelligence agencies (such as the CIA) and law enforcement agencies (especially the FBI).²⁹ These barriers were in many cases purposefully erected in regulations in order to ensure that foreign intelligence agencies would not be used to target U.S. persons (as had occurred on earlier occasions when intelligence agencies zealously investigated groups and individuals opposed to the Vietnam War).

After 9/11, Congress adjusted these barriers through provisions in the USA-Patriot Act of 2001 (P.L. 107-56) and other legislation. The USA Patriot Act authorized the sharing of law enforcement and foreign intelligence information. In addition, the Homeland Security Act (P.L. 107-296) provided that the Intelligence Analysis and Infrastructure Protection component of the Department of Homeland Security (DHS) would receive and analyze foreign intelligence and law enforcement information relating to terrorist threats to the U.S. Subsequently, the Bush Administration established the Terrorist Threat Integration Center (TTIC) to perform integrative analytical functions.³⁰ Such initiatives have arguably torn down (or at least significantly lowered) the "wall" between foreign intelligence and law enforcement that may have contributed to the failure to detect the 9/11 plot in advance. These developments, according to some observers, affect the need for enhancing the powers of a proposed DNI/NID.

Ongoing technological innovations are also, according to some observers, working to remove long-established barriers. The phenomenon of "stovepiping" whereby imagery, humint, or sigint would be collected by separate agencies in the field and forwarded to respective Washington-area headquarters to be processed and analyzed before being made available to users has received much criticism. Stovepiping, in essence, means the control of information by collection agencies. Inevitably, processing, transmission and forwarding lead to delays and impede the effort to bring all available data to bear on the intelligence needs of all levels of government.

The dangers of "stovepiping" are now widely recognized. DIA Director Lowell Jacoby testified to the two intelligence committee's Joint Inquiry:

²⁹ See, for instance, Statement of Mary Jo White, former United States Attorney for the Southern District of New York, before the Joint Intelligence Committees, October 8, 2002; *Joint Inquiry Report*, pp. 363-368; *9/11 Commission Report*, pp. 78-80.

³⁰ See CRS Report RS21283, *Homeland Security: Intelligence Support*, updated February 23, 2004.

... the more widely information is shared, the more likely its hidden meaning will be revealed. Information considered irrelevant noise by one set of analysts may provide critical clues or reveal significant relationships when subjected to analytic scrutiny by another. This process is critical for the terrorism issue where evidence is particularly scant, often separated by space and time.³¹

Well before 9/11, the Defense Department was taking advantage of new technologies to provide intelligence support to its forces. Real-time intelligence has been especially important in the use of precision munitions, allowing targeting of specific targets while minimizing casualties. Defense intelligence agencies are acquiring capabilities to collect comprehensive data, to provide instantaneous transmission, data storage, and immediate retrieval at all echelons. In many cases processing and analysis is undertaken at sites within the U.S., even Washington-area headquarters (a process known as “reachback”), and can be directly accessed by military units around the world to support ongoing tactical operations.

Observers, such as Berkowitz, have suggested that, rather than undertaking revision of complex statutes, efforts should be focused on generating “the political will needed to make all intelligence organizations implement a truly common set of security standards that balance the importance of keeping secrets with the importance of sharing information.”³² Berkowitz notes that Executive Order 12333, which serves a charter document for the Intelligence Community, is over 20 years old and needs revision, an effort that, in his view, “would be a faster, more effective vehicle for intelligence reform than a commission report or legislation. Such an order could also resolve the security barriers and other hurdles that currently keep intelligence agencies from working together more effectively.”

In October 2002 testimony before the Joint Inquiry, DIA Director Jacoby argued that a crucial need is “to create a new paradigm wherein ‘ownership’ of information belong[s] with the analysts and not the collectors.” Jacoby argued that the government should follow industry’s practice in adopting a standard for data storage that permit retrieval from multiple users at different agencies:

If we are to achieve an end state characterized by the ability to rapidly share and integrate information, we must move toward a common data framework and set of standards that will allow interoperability — at the data, not system, level.... And, the sooner the better, not just for a limited group of intelligence producers and subsets of data; it shouldn’t be an elective option. Interoperability at the data level is an absolutely necessary attribute of a transformed intelligence environment because it enables horizontal integration of information from all sources — not just intelligence — at all levels of classification.³³

Many observers believe that stovepiping can be gradually overcome because of the availability of technology for rapid dissemination of operational data and the press of operational requirements as occurred during Operation Iraqi Freedom.

³¹ Rear Admiral Lowell E. Jacoby, USN, Statement for the Record for the Joint 9/11 Inquiry, 1 October 2002, p. 4.

³² Berkowitz, “Intelligence Reform.”

³³ Jacoby, p. 8.

Outside observers argue that technological capabilities now permit increasing information sharing with reliable security protection.³⁴

The effort to promote wider sharing of information is widely supported, but there remain obstacles. Singling out NSA, the Senate Intelligence Community warned in 2003 of continuing resistance to such innovations:

The Committee has become increasingly concerned in recent years about bureaucratic and cultural obstacles to effective information and data sharing...

Cutting-edge analytical tools, many of which are already in use in the private sector, increasingly involve large-scale, multi-database analysis and pattern recognition. Using such approaches within the Intelligence Community, however, cannot proceed far without a significant revision of current orthodoxy as to information 'ownership' and control.³⁵

The Intelligence Authorization Act for FY2004 (P.L. 108-177, section 317) established a pilot program to assess the feasibility of permitting analysts throughout the Intelligence Community to access and analyze intelligence from the databases of other elements of the Community. In particular, the provision was intended to permit analysts in CIA and DIA to access sigint contained in NSA databases, but not published in formal NSA reports.

The 9/11 Commission, taking note of this ongoing process, urged that it be accelerated. It recommended that the President lead a "government-wide effort to bring the major national security institutions into the information revolution."³⁶ The Commission indicated a role for the NID and the Secretary of Homeland Security, backed by the Office of Management and Budget, to set common standards for information in the Intelligence Community, other public agencies, and relevant parts of the private sector. The Commission did not specifically address the issue within DOD. Provisions were, however, ultimately included in P.L. 108-458 directing the DNI to establish uniform security standards, common information technology standards, and policies and procedures to resolve conflicts between the need to share intelligence and the need to protect intelligence sources and methods.

Recent Developments, November-December 2004

The role of the NID/DNI received considerable attention during floor consideration of intelligence reform legislation in September and October 2004. Some Members sought to provide greater authority to the position, others preferred

³⁴ See Markle Foundation, Task Force on National Security in the Information Age, *Creating a Trusted Information Network for Homeland Security*, December 2003.

³⁵ U.S. Congress, 108th Congress, 1st session, Senate, Select Committee on Intelligence, *Authorizing Appropriations for Fiscal Year 2004 for Intelligence and Intelligence-Related Activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System*, S.Rept. 108-44, May 8, 2003, p. 24.

³⁶ *9/11 Commission Report*, p. 418.

more limited changes to current authorities. On September 29, the Senate voted to table an amendment (No. 3706) that would give the NID authority, “to supervise, direct, and control the operations” of the major DOD intelligence agencies as well as the CIA, but ultimately the Senate bill sought to create a stronger NID/DNI than was reflected in the House bill.³⁷ The ensuing conference reportedly had difficulty in reaching agreement on the issue, but many of the media accounts of discussions did not provide precise treatments of the arguments.

After further consideration, the conference version of S. 2845 was passed by the House on December 7 and by the Senate the following day. The legislation was approved by the President on December 17, 2004. In the signing the bill, President Bush stated:

It will be the DNI’s responsibility to determine the annual budgets for all national intelligence agencies and offices and to direct how these funds are spent. These authorities vested in a single official who reports directly to me will make all our intelligence efforts better coordinated, more efficient, and more effective.....

The new law will preserve the existing chain of command and leave all our intelligence agencies, organizations, and offices in their current departments. Our military commanders will continue to have quick access to the intelligence they need to achieve victory on the battlefield.

Provisions regarding the budgetary authorities of the DNI and other senior officials were complex and reflected the fact that significantly different views remain. The conference report for S. 2845 authorized the DNI to

- provide guidance for National Intelligence Program budget to heads of departments containing intelligence organizations;
- “develop and determine” an annual consolidated National Intelligence Program budget;
- present National Intelligence Program budget to the President for approval (together with dissenting comments from heads of departments containing intelligence organizations);
- participate in the development by the Secretary of Defense of the annual budgets for DOD-wide and tactical military intelligence programs;
- ensure the “effective execution” of annual intelligence budgets;
- direct the allotment or allocation of appropriations through the heads of departments containing intelligence agencies or organization

³⁷ As passed by the Senate, S. 2845 provided that the NID would “manage and oversee appropriations for the National Intelligence Program” (section 112). This would encompass execution of funds, reprogramming of funds, and the transfer of funds and personnel. The Senate bill also contained extensive acquisition and fiscal authorities for the NID to develop and implement program management plans for major intelligence systems (section 162). The version of S. 2845 as passed by the House would assign the NID the responsibility to “facilitate the management and execution of funds appropriated for the National Intelligence Program” (section 102A).

- provide “exclusive direction” to the Office of Management and Budget (OMB) regarding apportionment and subsequent allocations of appropriated funds;
- transfer or reprogram funds from one program in the National Intelligence Program to another (with OMB approval and subject to other restrictions);
- transfer personnel from one intelligence agency to another for up to two years (under certain conditions).³⁸

Taken together, these authorities will provide the DNI with significantly greater budgetary authorities than possessed by the DCI. In particular, provisions authorizing the DNI to direct allocations and allotments of appropriated funds gives the DNI significant leverage in the acquisition and program management efforts of intelligence agencies in DOD.³⁹ Some Members believed that this leverage would amount to a degree of control inconsistent with the Secretary of Defense’s responsibilities for managing intelligence agencies in DOD that also support the combat forces. Although the proposed language clearly establishes extensive budgetary authorities for the DNI, other factors such as the role of the personalities of the respective officials, the priorities of the incumbent administration, and the influence of congressional guidance will also have significant influences.

Moreover, the final version of the legislation includes a provision (Section 1018) that requires the President to issue guidelines to ensure the effective implementation of authorities granted to the DNI, the Director of the OMB, and cabinet heads “in a manner that maintains, consistent with the provisions of this act, the statutory responsibilities of the head of the departments of the United States Government with respect to such departments.” The guidelines are to be issued within 120 days of the appointment of the first DNI. Some observers suggest that this provision provides an opportunity for renewed consideration of the issues that made passage of P.L. 108-458 difficult.

Media accounts indicate that another key issue was day-to-day operational control of the collection assets of intelligence agencies in DOD. Some observers suggest, however, that this issue is not clear-cut. The legislation gives the DNI authority to apportion funds and the apportionment process affects the timing and rate of the flow of funds. Nevertheless, the authority to apportion and allocate appropriated funds does not automatically translate into the authority to direct day-to-day operations. There are already well-established distinctions between responsibilities for acquisition programs on the one hand, and responsibilities for operational command on the other. The military departments (the Departments of the

³⁸ S. 2845, version of November 20, 2004, published by *Congressional Quarterly*.

³⁹ Appropriated funds are not available to agencies until they are “apportioned” by the Office of Management and Budget (OMB) to government agencies in response to an agency request; an apportionment may be further subdivided by an agency into allotments, suballotments, and allocations. (See Office of Management and Budget, Circular No. A-11, Section 20-3.) Heretofore OMB has apportioned funds to DOD intelligence agencies at the request of the Secretary of Defense; the draft legislation now under consideration provides that such requests would be initiated by the DNI.

Army, Navy and Air Force) have major responsibilities for the acquisition of systems to be used by the operating forces, but ongoing operations are controlled by the unified commands (e.g. Central Command, European Command, Pacific Command) at the direction of the Secretary of Defense and the President. Analogously, the DNI would have responsibilities for acquisition of systems that are part of the National Intelligence Program; the heads of defense intelligence agencies would be responsible to the Secretary of Defense for operating the systems.

Day-to-day tasking of the national systems operated by intelligence agencies in DOD has been coordinated among “consumers” from throughout the Government, including DOD, the State Department, the White House, etc.. The DCI has long had authority to coordinate such tasking in response to NSC guidance.⁴⁰ For geospatial imagery, for example, the Source Operations and Management Directorate of NGA routinely meets with representatives of agencies outside DOD to coordinate production priorities. NGA acknowledges that authority to establish priorities derives from the authorities of the DCI rather than solely from those of the Defense Department.⁴¹ Similar arrangements exist in regard to other intelligence disciplines, such as signals intelligence.

P.L. 108-458 also established a Joint Intelligence Community Council (JICC) composed of the Secretaries of State and Defense and other senior officials, to advise the DNI on establishing requirements, developing budgets, financial management, and monitoring and evaluating the performance of intelligence agencies. The statute also provides for the submission of advice or opinion of individual members of the JICC to the President along with the recommendations of the DNI.⁴²

Past relationships among defense agencies, the Office of the Secretary of Defense, and the Intelligence Community Management Staff have been complex; the new legislation establishes a DNI with stronger budgetary authorities than possessed by the DCI. Nevertheless, the requirement for close coordination between the DNI and DOD agencies will remain. Given the need for agencies to meet different needs of different parts of the Government, observers believe that this new relationship will also be complicated and that considerable time will be required to develop coordinative procedures.

⁴⁰ Derived from the DCI’s authority under 50 USC 403-3(c) and section 1.5(m) of E.O. 12333 as amended by E.O. 13355 signed on September 1, 2004.

⁴¹ See comments of Robert Cardillo, quoted by Joe Francica, “Exclusive Interview-Robert Cardillo, Director, Source Operations and Management, National Geospatial Intelligence Agency,” *Directions*, July 29, 2004 (www.directionsmag.org). .

⁴² S. 2845, version of November 20, 2004, Section 1031.